IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1241 OF 2002.

Mr. Subhash Babu Patekar .. Petitioner.
V/s
1. Mr. Vitthal Gangaram Kale
And another ..Respondents.

Mr. J.B. Kocheta for the applicant.

Mr.S.M. Suryavanshi for the respondnet No.1.

Mrs. M. M. Deshmukh, APP for the State.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 4TH OCTOBER, 2006.

P.C.

. Mr. Kocheta appearing in support of this petition challenging an order passed on 17th July, 2002 in Criminal Revision Application No. 265/2000, submits that the Criminal case which is filed against the petitioner is not maintainable for want of sanction under Section 197 of Code of Criminal Procedure. He submits that admittedly, the petitioner was serving as a Sub-Registrar at Ghodegaon on the date of alleged incident. Once the petitioner is a public servant then under Section 197 of Cr.P.C. would apply and unless sanction to prosecute contemplated therein is granted no

prosecution can be initiated. This aspect goes to the root of the matter and therefore, the petition be admitted and ad interim order passed earlier be continued.

2. On the other hand, the learned Advocate appearing for the first respondent-original complainant submits that process has been issued in Reg. Complaint case No. 84 of 1997 by Judicial Magistrate, F.C., Ghodegaon on the basis that whether the petitioner who is prima facie guilty of an offence not just of hurling abuses but threatening the complainant is entitled to any protection and more so, that of Section 197 of Cr.P.C. Whether the act is committed during the course of the official duties or purporting to act as such is some thing which has to be decided by the Courts below on a reading of the complaint. Once it is not contended that the complaint does not disclose commission of any offences, then the present petition be not entertained. In any event this is a possible view of the matter and therefore, no case of interference under Article 227 of the Constitution of Indian and Section 482 of Cr.P.C. is made out.

3. Mr. Kocheta has relied upon the decisions of the Supreme Court reported in;

AIR 2006 S.C. 2407 (Jaysingh V. K.K. Velayutham & Anr.), AIR 1956 S.C. 44 (Matajog Dobey V. H.C. Bhari), AIR 2006 S.C. 1599 (Sankaran Moitra V. Sadhna Das & Anr.) and (1988) 1 S.C.C. 692 (Madhavrao Jiwajirao Scindia and others V. Samhajirao Chandrojirao Angre and others)

4. It will not be possible to entertain the submission of Shri Kocheta that complaint does not disclose any offence, even prima facie for the simple reason that the Criminal Revision Application before the learned Additional Sessions Judge was argued on the basis that the complaint cannot proceed for want of sanction under Section 197 of Cr.P.C. Now, it is not permissible to urge that even complaint does not disclose commission of any offence. That apart, I have perused the complaint with the assistance of the learned Counsel appearing for both sides. The version of the complainant appearing in the complaint whether is different from that before the police, is a matter which cannot be decided at this stage. It would be open for

the petitioner to raise all pleas regarding want of sanction after materials in that behalf are placed before the Trial Court. Prima facie, the complaint discloses commission of an offence.

5. As far as absence of sanction is concerned, if the complaint is read, as a whole, it is clear that at this stage the concurrent findings are to the effect that whether the acts committed by the petitioner are while acting or purporting to act in discharge of official duties is once again a matter which must be decided by the trial Court at an appropriate stage. It cannot be held that this prima facie conclusion is vitiated by any error apparent or perverse warranting interference in Writ Jurisdiction unless the basic ingredients of Section 197 Cr. P.C. are satisfied it cannot be concluded at the stage of issuance of process that the complaint in this case is not maintainable for want of sanction. Moreover, the complaint alleges that as soon as the complainant entered the office of the petitioner for identifying a document and with his permission, suddenly the petitioner directed him to get out or else the petitioner would kick him out. When the complainant pointed out that a responsible officer like

petitioner should use mild language, the petitioner got annoyed and said that he is Sub-Registrar and has contacts with Higher Officials. Even if the petitioner physically harms the complainant nobody can do anything to him. It is well settled that a public servant is not entitled to indulge in criminal activities.

6. Prima-facie, the acts complained of viz. abusing and threatening the complainant with dire consequences for having entered chamber/office of the petitioner cannot be straight way said to be committed while acting or purporting to act in the discharge of the official duties. In the latest decision reported in AIR 2006 S.C.2407 (Supra) the Hon'ble Supreme Court has observed that whether the sanction is necessary or not may be appropriately raised at different stages depending upon the allegations made in the complaint (See para 15 to 18). In my view, this decision takes note of all earlier decisions rendered by the Hon'ble Supreme Court including the one reported in AIR 1956 S.C. 44 (Matajog Dobey V. H.C. Bhari). It is therefore, not permissible at this stage to interfere. The issue of sanction is kept open for being raised at an appropriate stage. The order passed by the

Revisional Court would not prevent the petitioner from placing appropriate materials and raise the issue once again during the course of the trial.

7. At this stage Mr. Kocheta seeks continuation of the ad interim order passed by this Court on 23rd October, 2002. This request is opposed by the Advocate appearing for the first respondent.

7. In my view, interest of justice would be subserved if ad interim order is continued for a period of 4 weeks to enable the petitioner to approach the higher Court.

8. Petition is dismissed.

(S.C.DHARMADHIKARI, J.)